

## General Review Without a Building Permit

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### Regulatory Framework

OAA members<sup>i</sup> (members) are required to undertake and provide general review services in compliance with the prevailing legislation and regulations, including the [Architects Act](#) (the Act) and Ontario [Regulation 27](#) (the regulations), the *Building Code Act*, and the Building Code. The Act and regulations include the following:

From the Act:

*“general review,” in relation to the construction, enlargement, or alteration of a building, means an examination of the building to determine whether the construction, enlargement, or alteration is in general conformity with the design governing the construction, enlargement, or alteration, and reporting thereon;*

*“practice of architecture” means,*

- a) *the preparation or provision of a design to govern the construction, enlargement, or alteration of a building,*
- b) *evaluating, advising on, or reporting on the construction, enlargement, or alteration of a building, or*
- c) *a general review of the construction, enlargement, or alteration of a building;*

From the Regulations:

**42.** *For the purpose of the Act, “professional misconduct” means,*

1. *Contravention of any provision of the Act, or the Regulations.*
2. *Knowingly contravening any provision of the Building Code Act, 1992 or the building code.*
3. *Knowingly contravening any federal, provincial or municipal law, regulation, or bylaw relating to the construction, enlargement or alteration of buildings.*
4. *Authorizing, permitting, counselling, assisting, aiding, abetting or acquiescing in any contravention of a federal, provincial or municipal law, regulation or by-law relating to the construction, enlargement or alteration of buildings.*
9. *Failing to maintain the standards of practice of the profession.*
10. *Failing to maintain the performance standards of the profession.*
38. *Doing or failing to do anything while engaged in the practice of architecture that shows a deliberate or reckless disregard for the rights and safety of others.*
39. *Failing to perform architectural services with reasonable skill and judgment.*

**47.(2)** *It is part of the standards of practice that every holder of a certificate of practice must,*

- (b) *maintain chronological books, records, accounts, and files for each architectural project including,*
  - (iv) *files containing all certificates, statements, notices and other documents with respect to contract administration or general review carried out.*

**49.** *The following are prescribed as standards of practice:*

10. *Where a member or holder provides general review of the construction, enlargement or alteration of a building to a design-builder, the member or holder must perform all of the services prescribed as performance standards by Section 50.*

**50.** The following are prescribed as performance standards with respect to the general review of the construction, enlargement, or alteration of a building by a member or holder as provided for in the building code:

1. The member or holder, with respect to the matters that are governed by the building code, shall,
  - i. make periodic visits to the site to determine whether the work is in general conformity with the design documents that were prepared by a member or holder,
  - ii. inform the client and contractor in writing as to the progress and quality of the work and as to any part of the work that the member or holder has observed during the visits to the site not to be in conformity with the design documents,
  - iii. review all changes to the design documents to determine whether the changes conform to the building code,
  - iv. review and comment on shop drawings and samples for general conformity with the design concept of the work, and
  - v. if the member or holder is specifically engaged to co-ordinate the general review of the professional engineers and reports of the inspection and testing companies, co-ordinate the general review of the professional engineers and the reports of the inspection and testing companies that pertain directly to the work being reviewed and arrange for the distribution of such reports to the client and the contractor, or
  - vi. if the member or holder is not engaged to perform any or all of the services listed in subparagraph v, co-operate with the professional engineer responsible for the co-ordination of the general review in order to assist the professional engineer in the carrying out of the functions described in that subparagraph.

2. In paragraph 1,

*“design document” means a design or other document which formed the basis for the issuance of a building permit and includes all changes thereto that were authorized by the chief building official as defined in the Building Code Act, 1992.*

## **Background and Considerations**

### **Building Permit Required but Not Issued**

During construction, general review must be provided to confirm the construction is being carried out in general conformity with plans and specifications that formed the basis for issuance of a building permit.

If an OAA member performs a general review of a construction project in Ontario without ensuring that a valid building permit has been obtained, there can be serious legal and professional consequences. These may include (but are not necessarily limited to):

1. Professional discipline: OAA members must meet their professional obligations, including refraining from engaging in professional misconduct. Among other things, if a member knowingly proceeds with general review services on a project without a building permit, they may be subject to disciplinary action.
2. *Building Code Act* violations: Proceeding without a building permit generally violates the *Ontario Building Code Act*, which can lead to fines for individuals and companies involved in a project.
3. Insurance and financial consequences:
  - a. Professional liability insurance: If the member/practice’s actions lead to a claim, professional liability insurance may not cover the claim if the member/practice acted contrary to the law, such as conducting work without a building permit.
  - b. Financial: A member/practice may be held financially liable for damages incurred due to construction proceeding without a permit. Those damages can include (among other things) the cost of halting and restarting the project once a permit is obtained and the cost of remediating any aspect of the project that was constructed without a permit.

#### 4. Damage to reputation:

- a. Client relations: Failing to act in accordance with building permit requirements can damage the member/practice's reputation. Clients and prospective clients may lose trust in the member/practice's ability to manage regulatory requirements properly.
- b. Industry reputation: Members have a duty to maintain professional standards. Involvement in illegal construction practices can lead to negative publicity, impacting future work and professional relationships.
- c. Reputation of the profession: Failing to act in accordance with regulatory requirements can negatively impact the reputation of the architectural profession.

Ensuring that a building permit is in place before providing general review services is a crucial responsibility of OAA members and practices. Failure to do so has significant legal, professional, and reputational risks.

### **Building Permit May Not Be Required**

In Ontario, certain projects may be subject to different rules regarding building permits.

#### Government Projects

- Projects carried out by the federal government or on federal land (such as military bases) are typically exempt from the requirement to obtain a municipal building permit. This is because federal government property is generally not subject to provincial laws, including the Ontario Building Code. However, federal projects must still adhere to federal laws, regulations, and building standards. Members/practices should obtain appropriate advice regarding compliance with federal law.
- Provincial and municipal governments and other crown agents (e.g., colleges) may not always be required to obtain permits from the local municipality for their own projects. However, they are typically expected to comply with the same safety and building standards. Members/practices should obtain appropriate advice regarding projects for provincial and municipal governments and crown agents.

#### Projects on Indigenous Reserves

- Construction on Indigenous reserves is generally governed by federal legislation under the [Indian Act](#) and related federal regulations, as well as the laws of Indigenous governments, rather than provincial laws like the Ontario Building Code.
- Building permits for projects on reserves are typically managed by the First Nation's government or a body responsible for housing and construction on the reserve. Some First Nations have developed their own building codes and permit systems, which may be similar to provincial standards but adapted to local needs.
- Projects on reserves often involve federal government oversight (e.g. through Indigenous Services Canada) and must meet safety and health standards, though the exact rules vary depending on the specific First Nation and the nature of the project.
- Members/practices should obtain appropriate advice to ensure compliance with laws applicable to projects on Indigenous reserves.

In both cases—government projects and projects on reserves—building code principles are typically followed, but the authority overseeing the permitting process differs from Ontario municipal jurisdictions. For projects like these, OAA members are expected to understand and comply with the relevant regulatory requirements. In some instances, this may mean that the general review is conducted without the issuance of a building permit.

### **General Review During Emergencies**

During emergencies, such as a pandemic, regulatory requirements often need to be adapted to accommodate urgent and evolving circumstances. Authorities having jurisdiction may implement temporary emergency measures that affect standard processes, including those related to building codes, standards, permitting, and compliance.

These changes, which may modify existing requirements, are aimed at addressing immediate public safety concerns and ensuring the rapid delivery of critical infrastructure or services. As such, professionals involved in planning, construction, and other regulated activities must stay informed about these evolving requirements and be prepared to navigate the regulatory landscape in a way that balances compliance with the need for swift action.

In addition to staying informed about evolving regulatory requirements during emergencies, it is crucial for professionals to contact their professional liability insurance providers. Changes in regulations or emergency measures may introduce unforeseen risks, and it is important to ensure that any actions taken under these conditions remain within the scope of coverage. By consulting with their insurance provider, professionals can clarify whether adjustments to their coverage are needed to address emergent situations. Further, professionals should obtain legal advice to minimize the risks associated with decisions made during the emergency. Legal guidance can help professionals navigate complex situations, minimize the risk of liability, and protect their interests while responding effectively to the crisis.

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*The OAA does not provide legal, insurance, or accounting advice. Readers should consult their own legal, insurance, or accounting advisors to obtain appropriate professional advice. OAA members are responsible for ensuring that they comply with all applicable laws, regulations, policies, and bylaws. Regulatory Notices do not comprehensively address all laws, regulations, policies, and by-laws that may apply in a particular scenario.*

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<sup>i</sup> **OAA member:** Every person issued a licence or limited licence by the Ontario Association of Architects is a member of the Association, subject to any term, condition, or limitation to which the licence is subject.